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10/789,294

02/26/2004

Gary Piaget

2071/US/2

7642

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7590

08/21/2008

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EXAMINER

CROW, STEPHEN R

ART UNIT

PAPER NUMBER

3764

MAIL DATE

DELIVERY MODE

08/21/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

| | | | |
|------------------------------|--------------------------------------|--------------------------------------|--|
| Office Action Summary | Application No. 10/789,294 | Applicant(s) PIAGET ET AL. | |
| | Examiner Steve R. Crow | Art Unit 3764 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 February 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-38 is/are pending in the application.
- 4a) Of the above claim(s) 7-18,21 and 22 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 6 is/are allowed.
- 6) ☒ Claim(s) 1-5,24 and 36-38 is/are rejected.
- 7) ☒ Claim(s) 19 and 20 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-5,24,36-38 are rejected under 35 U.S.C. 102(b) as being anticipated by Yoshimura (2001/0016542).

Yoshimura (2001/0016542) discloses a treadmill/stepper type exercise device having first and second treadles 81-82 each having an endless belt and each pivotally attached to the frame. Yoshimura (2001/0016542) discloses several embodiments having interconnection means. Figures 5(a-c) show spring resistors 84 which are operatively coupled with the interconnection means 83-84 as shown in figures 5(a-c), the interconnection means having two rocker assemblies.

As to claim 3, note the rocker arms 84 of Figure 5(b) each having pivot axes.

3. Claims 1-5,24,36-37 are rejected under 35 U.S.C. 102(b) as being anticipated by Kuo (6461279).
4. Kuo discloses a treadmill/stepper type exercise device having first and second treadles 23 each having an endless belt and each pivotally attached to

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the frame. Note the resistance means 17 which are operatively connected to the interconnection assembly.

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claim 38 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kuo (279) in view of Piaget et al (5626539).

5. Piaget et al (5626539) teaches connecting treadle resistors below the treadles. In view of this teaching, it would have been obvious to one skilled in the art to connect the Kuo resistance means form below the treadles as opposed to above the treadles.

3. Claim 38 is rejected under 35 U.S.C. 103(a) as being unpatentable over Yoshimura (2001/0016542) in view of Piaget et al (5626539).

6. Piaget et al (5626539) teaches connecting treadle resistors below the treadles. In view of this teaching, it would have been obvious to one skilled in the art to connect the Yoshimura (2001/0016542) resistance means form below the treadles as opposed to above the treadles.

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Response to Arguments

4. Applicant's arguments filed 2/19/08 have been fully considered but they are not persuasive.
5. The amendment to the claims adding that the treadles " pivot at the rear thereof " barely limits the claims. Kuo and Yoshimura (2001/0016542) each have treadles which are pivotally connected to the frame at one end. This end is considered to be the rear portion thereof.
- 6.

Allowable Subject Matter

7. Claims 6,19-20 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims./Steve R Crow/
8. Primary Examiner, Art Unit 3764
7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory

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action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

9.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steve R. Crow whose telephone number is 571-272-4973. The examiner can normally be reached on Reg:8:30-6;Off First Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Sirmons can be reached on 571-272-4965. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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SC

/Steve R Crow/

Primary Examiner, Art Unit 3764